Supreme Court, U.S.
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No. 09-1527

IN THE

Supreme Court of the United States

JOHN S. KARLS,

Petitioner,

v.

THE GOLDMAN SACHS GROUP, INC., ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether this Court should review questions of state law in the absence of any substantial federal question or any conflict between lower federal and state courts.

2. Whether California tort law recognizes a claim for conversion of an "idea."

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Respondent The Goldman Sachs Group, Inc. has no parent corporation and does not know of any publicly held corporation that owns 10% or more of its stock.

Respondents Citicorp North America, Inc., Citicorp USA, Inc., Citicorp Aircraft Management, Inc., Citicorp Bankers Leasing Corporation, Citicorp Credit Services, Inc., Citicorp Del-Lease, Inc., Citicorp Development Center, Inc. (USA), Citicorp Diners Club Inc., Citicorp Home Equity, Inc., Citicorp Home Mortgage Services, Inc., Citicorp Real Estate, Inc., Citicorp Securities Services, Inc., Citicorp National Services, Inc., Citicorp Payment Services, Inc., Citigroup Energy Inc., Citigroup Global Markets Inc., Citigroup Global Markets Realty Corp., Citigroup Investments, Inc., Citigroup Management Corp., and Citigroup Technology, Inc. are direct or indirect subsidiaries of Citigroup Inc. Citigroup Inc. is a publicly held company and does not know of any publicly held corporation that owns 10% or more of its stock.

Respondents ING Financial Holdings Corporation, ING North America Insurance Corporation, ING Life Insurance and Annuity Company, ING USA Annuity and Life Insurance Company, Reliastar Life Insurance Company, Reliastar Life Insurance Company of New York, and Security Life of Denver Insurance Company are indirect subsidiaries of ING Groep NV, a public limited company organized under the laws of the Netherlands. 99.9% of ING Groep NV's ordinary shares

are owned by Stichting ING Aandelen. Respondents do not know of any other holders of more than 10% interest in ING Groep NV or Stichting ING Aandelen.

The alleged Respondents identified as "The Goldman Sachs U.S.-Tax 'Consolidated Group' of Corporations," "The Citigroup U.S.-Tax 'Consolidated Group' of Corporations," "The ING U.S.-Tax 'Consolidated Group' of Life-Insurance Corporations," and "The ING U.S.-Tax 'Consolidated Group' of Non-Life-Insurance Corporations" (the "Consolidated Group Respondents") do not exist. They were improperly named throughout these proceedings, were never served with process, and never appeared in the actions.

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BRIEF IN OPPOSITION

OPINION BELOW

The orders of the United States Court of Appeals for the Ninth Circuit summarily affirming the district court's judgments and finding that Petitioner's appeals raised no substantial questions (Pet. App. 22a, 23a, and 24a) are unreported. The Ninth Circuit's orders denying Petitioner's motions for reconsideration en banc on behalf of the entire court (Pet. App. 4a, 5a, and 6a) are

unreported. The district court's orders granting Respondents' separate motions to dismiss in the underlying actions (Pet. App. 7a, 12a, and 17a) are unreported, as are the judgments of the district court.

JURISDICTION

Petitioner does not state the basis on which he seeks to invoke this Court's jurisdiction. This Court may review cases from the United States Courts of Appeal under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

Petitioner's meritless complaints for common-law conversion were dismissed with prejudice by the district court, exercising diversity jurisdiction, based on settled state law. The Ninth Circuit summarily affirmed the judgments after briefing and denied en banc review. The lower courts followed all applicable procedures and afforded Petitioner more than due process. Review is not warranted and the Petition for a Writ of Certiorari should be denied.

A. The Parties and History of the Dispute

Petitioner filed sixteen separate, nearly identical lawsuits against financial institutions in the Superior Court of California, San Francisco County.[1] His sixteen complaints asserted the same purported cause of action based on the same factual allegations. Included among those lawsuits were the three against Respondents at issue here, which Petitioner filed on June 15, 2009.

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[1] Petitioner states there are only "15 such actions." (Pet. at 26.) He has miscounted.

In his complaints, Petitioner attempted to allege a claim for conversion of an "idea" concerning certain tax-saving mechanisms that he purportedly "invented." (Pet. App. 27a.) His complaints defined the allegedly converted "Property" as "the idea that two different groups of companies would claim a tax advantage from combining the separate income taxes that each would otherwise pay on a portion of their income into a single tax for which both could claim benefit." (Pet. App. 28a.) In support of these assertions, Petitioner attached a June 30, 2006 *Wall Street Journal* article that supposedly described the "idea" and its widespread use by banks, not including any of the Respondents here. (Pet. App. 31a.) Beyond conclusory recitations that "[t]he Property belongs to the Plaintiff" and that Respondents "caused" the "Property" to be converted, Petitioner made no allegations regarding his supposed proprietary interest in the "idea" or connecting Respondents in any way to its purported use. (Pet. App. 26a-30a.)

Respondents timely removed the three actions against them to the United States District Court for the Northern District of California on the basis of federal diversity jurisdiction.

B. District Court Proceedings

Following removal, Respondents moved to dismiss the complaints for failure to state a claim on the basis of well-settled California law that the tort of conversion does not apply to "ideas" and the absence of any other alleged actionable interference by Respondents with

Petitioner's purported rights.[2] Petitioner opposed the motions and did not seek leave to amend. After full briefing on the merits, the district court dismissed the complaints with prejudice.[3] (Pet App. 7a, 12a, and 17a.) Relying on the applicable state law, the district court held: "It is well settled law that ideas may not be the subject of conversion." (Pet. App. 10a, 15a, and 20a (citations omitted).) Because Petitioner's complaints described "no other legally-recognized property interest or exclusive possession of any property by [Petitioner]," the district court also found the allegations insufficient to establish a "plausible basis" for any claim against Respondents. (*Id.*)

Contrary to Petitioner's assertions (Pet. at 51), the district court followed its local rules and the Federal Rules of Civil Procedure. The purported "illegal supplemental brief" referred to in the Petition does not exist. After full briefing, the district court exercised its discretion to find Respondents' motions "appropriate for decision without oral argument." (Pet App. 7a, 12a, and 17a.)

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[2] The district court deemed the three actions "related" and assigned them to the same district judge, but the actions were not consolidated and remained separate cases.

[3] Respondents also moved to dismiss the complaints and to quash purported service as to the non-existent "Consolidated Group" Respondents. (Pet. App. 7a.) The district court found those motions moot upon the dismissal of the actions. (*Id.*)

C. Circuit Court Proceedings

Petitioner filed notices of appeal to the United States Court of Appeals for the Ninth Circuit. Following its review of the record and the parties' briefs in response to its Order to Show Cause, the Ninth Circuit concluded that the questions raised in Petitioner's appeals were "so insubstantial as not to require further argument" and summarily affirmed the district court's judgments pursuant to Ninth Circuit Rule 3-6. (Pet. App. 22a, 23a, and 24a.)

Petitioner filed petitions for rehearing en banc. Because Petitioner sought further consideration of the court's orders disposing of the appeals (as opposed to an opinion or memorandum disposition), pursuant to Ninth Circuit Rule 27-10 and Ninth Circuit General Order 6-11, the court appropriately construed the petitions for rehearing en banc as motions for reconsideration en banc of its orders and denied the requests on behalf of the full court. (Pet. App. 4a, 5a, and 6a.) Contrary to Petitioner's assertion, the three-judge panel did not "illegally seize[] control" of Petitioner's requests for en banc rehearing. (Pet. at 38, 49-50.) Nothing in the record supports Petitioner's imagined claim that his requests for en banc rehearing were treated improperly or that the court did anything other than follow the procedures set out in its own rules and general orders.

REASONS FOR DENYING THE PETITION

The Petition identifies no cognizable reason why this Court should depart from its standards to grant certiorari, and is without merit. Nor is there any basis to disturb the procedurally and substantively correct final judgments disposing of Petitioner's defective common-law claims against Respondents. As summarized below, Petitioner's contrary arguments have no legal basis and misstate the records of these actions.

I. THE PETITION SEEKS REVIEW OF PURELY STATE LAW ISSUES AND PRESENTS NO SUBSTANTIAL FEDERAL QUESTIONS.

The Petition presents no substantial legal issues, much less any "important federal question." *See* Sup. Ct. R. 10. Petitioner attempted to state a common-law conversion claim against Respondents. There is no federal question jurisdiction here, and Petitioner admits that California state law is controlling. The courts below appropriately applied state law to resolve the cases in unpublished orders. Nothing in their decisions conflicts with the rulings of the state court in Petitioner's thirteen other actions, several of which are now pending in the California Court of Appeal, and nothing about the settled state law issues supports review.

Petitioner's purported "questions presented" confirm that there is nothing for this Court to review. In his first "question presented," Petitioner criticizes the Ninth Circuit for alleged misapplication of

substantive California law of conversion. (Pet. at 44.) Petitioner states no reason why this issue presents an "important federal question" warranting this Court's review. It does not. Moreover, the California courts have dismissed at least two of Petitioner's identical lawsuits against other defendants on substantially similar grounds. Those cases are now pending before the California Court of Appeal, which is the appropriate venue to address any issues of California law. (Pet. at 32-33.) Finally, as summarized in Part II, *infra*, the district court correctly followed controlling California law in dismissing Petitioner's defective claims.

The remaining two purported "questions" raised in the Petition are meritless on their face. The claim that Respondents filed an "illegal supplemental brief" in the district court is false. No such brief was filed, which is why Petitioner does not (and cannot) provide evidence of the same in his Appendix. The district court was entitled to exercise its discretion to decide the motions without oral argument. *See* Fed. R. Civ. P. 78(b) (authorizing determination of motions on briefs without oral hearings); N.D. Cal. Civ. L.R. 7-1(b) (same). The Petition shows no prejudice to Petitioner on this subject or otherwise suggests why the issue merits this Court's attention. The claim that the Ninth Circuit's three-judge panel improperly denied his disfavored petitions for rehearing en banc in violation of Federal Rule of Appellate Procedure 35 is similarly fabricated and finds no support in the record. Both the district court and the court of appeal followed their rules. Petitioner does not challenge the rules themselves or procedures under which they were adopted. *See* Fed. R. Civ. P. 83 (authorizing a district court to "adopt and amend rules

governing its practice"); Fed. R. App. P. 47 (authorizing each court of appeal to "make and amend rules governing its practice"). Adherence to the local rules under the circumstances of this case did not deny Petitioner any due process of law. *See Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971) (per curiam) (rejecting due process claim based on court's ruling on motion to dismiss without oral argument under local rules); *see also FCC v. WJR, The Goodwill Station, Inc.*, 337 U.S. 265, 276 (1949) ("Certainly the Constitution does not require oral argument in all cases where only insubstantial or frivolous questions of law, or indeed even substantial ones, are raised.").

Petitioner's frivolous new claims that these matters and the alleged interests of Holocaust victims, art lovers, inner-city children, or other non-parties (as to whom he has no standing to raise claims on behalf of) somehow implicate due process or equal protection concerns warrant no response.

II. THE LOWER COURTS CORRECTLY APPLIED CALIFORNIA LAW IN REJECTING PETITIONER'S CLAIM FOR CONVERSION OF AN IDEA.

Controlling California precedent mandated dismissal of Petitioner's claims. As the district court correctly held: "It is well settled law that ideas may not be the subject of conversion." (Pet. App. 10a, 15a, and 20a.) The district court cited *Melchior v. New Line Prods. Inc.*, 106 Cal. App. 4th 779, 793 (2003) (holding the "tort of conversion does not apply to ideas"), and

Minniear v. Tors, 266 Cal. App. 2d 495, 502 (1968) (holding "there can be no conversion of an idea."). Petitioner's attempt to circumvent this authority through a tired argument that his "idea" was complex and had to be memorialized in writing is of no import. Nor is the earlier California case, *Italiani v. Metro-Goldwyn-Mayer Corp.*, 45 Cal. App. 2d 464 (1941), which concerned the "sole question" whether an action was time-barred under the statute of limitations, *id.* at 465. California conversion law does not distinguish between written and unwritten ideas. *Minniear*, 266 Cal. App. 2d at 498 (holding a television show idea could not be converted even when the idea was reduced to a written script). Moreover, Petitioner has never claimed that Respondents converted any of his writings.

Petitioner's conversion claim also failed due to his inability to allege actionable interference with any of his property interests. *See Moore v. Regents of the Univ. of Cal.*, 51 Cal. 3d 120, 136 (1990) (affirming that conversion requires actual interference with ownership or possession of personal property). Because an idea by its nature cannot be exclusively possessed or controlled, and Petitioner at all times retained full ability to use it himself, he could not establish this essential element of conversion, even if he could allege a legally cognizable property interest.

Finally, Petitioner has identified no conflict between or among any state or federal courts on these issues. Indeed, his Appendix shows that the state court, like the lower federal courts here, dismissed one of

Petitioner's other lawsuits based on the same grounds.[4] (Pet. App. 40a.)

Notwithstanding the Petition's attempt to distort the record and effort to manufacture a federal issue, this is a simple case of faulty pleading of a common-law claim, and the record fails to sustain any alleged federal issue for this Court's review. Dismissal with prejudice in the lower courts was warranted.

[4] Petitioner notes that a state court dismissed one of his thirteen other similar lawsuits partly on federal copyright preemption grounds, apparently based on the argument that Petitioner's "idea" did not exist outside a tangible document. (Pet. at 30; Pet. App. 39a.) However, Petitioner has never attempted to assert a copyright claim against Respondents; nor could he. Copyright protection is expressly prohibited for ideas, procedures, concepts, and methods of operation. 17 U.S.C. § 102(b). Plaintiff has not alleged any of the essential elements of a copyright claim, including: that he is the registered owner of a valid copyright, *see* 17 U.S.C. § 411(a); *Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1211 (9th Cir. 1998); that Respondents copied or impermissibly used any such copyrighted work, *see Narrell v. Freeman*, 872 F.2d 907, 910 (9th Cir. 1989); or that his idea is original and within the subject matter of copyright law, *see Feist Publ'ns v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345-47 (1991).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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